

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: ) In Proceedings  
 ) Under Chapter 7  
GLENDA L. SANDBACH, )  
 ) No. BK 89-50513  
Debtor(s). )

MEMORANDUM AND ORDER

On September 1, 1989 Glenda L. Sandbach ("debtor") filed a petition under Chapter 7 of the Bankruptcy Code. Debtor claimed as exempt certain "small tools for business"<sup>1</sup> in the amount of \$2,000.00, as well as \$18,000.00 in life insurance proceeds payable as a result of her husband's death on August 9, 1989. The Trustee objects to both exemptions.

Debtor's claimed exemption in small tools is made pursuant to Ill.Rev.Stat. ch. 110, ¶¶12-1001(b) & (d).<sup>2</sup> Those sections provide:

The following personal property, owned by the debtor, is exempt....

(b) The debtor's equity interest, not to exceed \$2,000 in value, in any other property....

(d) The debtor's equity interest, not to exceed \$750 in value, in any implements, professional books or tools of the trade of the

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<sup>1</sup>The tools at issue are those used for making craft items, and include paints and various hand tools.

<sup>2</sup>Debtor cites only paragraph 12-1001(b) on her schedules as authority for her exemption. At the hearing on the Trustee's objections, however, counsel for debtor indicated that the exemption was being claimed pursuant to paragraph 12-1001(d) as well.

Debtor's exemptions are based on state law since Illinois has chosen to "opt out" of the federal exemption scheme pursuant to 11 U.S.C. §522(b)(1). See Ill.Rev.Stat. ch 110, ¶12-1201.

debtor....

Ill.Rev.Stat. ch. 110, ¶¶12-1001(b) & (d).

The Trustee contends that debtor's exemption in small tools exceeds the statutory amount allowed by paragraph 12-1001(d) for tools of the trade. The Trustee further contends that the "wild card" exemption set forth in 12-1001(b) is limited to property used for personal purposes. The Trustee's argument in this regard is premised on the last paragraph of the exemption statute, which provides, "The personal property exemptions set forth in this Section shall apply only to individuals and only to personal property which is used for personal rather than business purposes." Ill.Rev.Stat. ch. 110, ¶12-1001(h). Therefore, according to the Trustee, debtor is entitled to an exemption only to the extent of \$750.00, and cannot claim a wild card exemption in the remaining amount since her tools are used for business purposes.

The Seventh Circuit has held that "personal property exemption statutes should be liberally construed in order to carry out the legislature's purpose in enacting them--to protect debtors." Matter of Barker, 768 F.2d 191, 196 (7th Cir. 1985). "[W]here an exemption statute might be interpreted either favorably or unfavorably vis-a-vis a debtor, we should interpret the statute in a manner that favors the debtor." Id. The Barker court further held that a debtor is entitled to "stack" exemptions under the Illinois exemption statute. Id.

This Court, citing the holding in Barker, has already held that a debtor can exempt property used for business purposes under both the tools of the trade and wild card exemptions where the value of the property in question exceeds the \$750.00 tools of the trade exemption.

See In re David Lasica, Sr., No. 88-30465 (Bankr. S.D. Ill. November 9, 1988). The Court relied in part on In re Allman, 58 B.R. 790 (Bankr. C.D. Ill. 1986), in which the debtor likewise attempted to claim an exemption in property used for business purposes under both the tools of the trade and wild card exemptions. The Allman court, noting that tools of the trade are by definition property used for business purposes, first identified the seemingly inconsistent provisions of the exemption statute, i.e., the tools of the trade exemption and the requirement in 12-1001(h) that exemptions only apply to personal property that is used for personal rather than business purposes. After examining the legislative history of the statute, the court then concluded:

There is no evidence that the Illinois legislature intended to repeal the tools of trade exemption by limiting exemptions to property used for personal purposes. All indications are to the contrary. The most logical reading of ... 12-1001(h) is that it prevents a debtor from claiming a wild card exemption in personal property used for business other than implements, professional books, or tools of trade. It constrains logic to interpret [12-1001(h)] to prevent a debtor from claiming excess equity in tools of trade as exempt under the wild card provision. The stacking of such exemptions protects debtors and their families by facilitating their financial rejuvenation.

Id. at 793 (emphasis added).

The Court agrees with the reasoning set forth in the Allman decision, particularly in light of the Seventh Circuit's holding that ambiguous provisions in exemption statutes are to be construed in a manner that favors debtors. To accept the Trustee's argument that subsection (h) precludes debtor from claiming a wild card exemption in tools because

they are used for business purposes is to also suggest that subsection (h) impliedly repealed the tools of the trade exemption. As stated in Allman, the Court "does not believe that the Illinois legislature intended to cause this anomalous result or to limit the debtor's right to maximize the tools of trade exemption under all available Illinois exemption laws...." Id. at 792. Debtor is therefore entitled to an exemption in the entire amount of \$2,000.00 under the tools of the trade and wild card exemptions.

Debtor also claims as exempt \$18,000.00 in life insurance proceeds payable as a result of her husband's death on August 9, 1989. Debtor claims this exemption under paragraphs 12-1001(f) and 12-1001(h)(3), which provide:

The following personal property, owned by the debtor, is exempt....

(f) All proceeds payable because of the death of the insured and the aggregate net cash value of any or all life insurance and endowment policies and annuity contracts payable to a wife or husband of the insured, or to a child, parent or other person dependent upon the insured, whether the power to change the beneficiary is reserved to the insured or not and whether the insured or the insured's estate is a contingent beneficiary or not....

(h) The debtor's right to receive, or property that is traceable to....

(3) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor or a dependent of the debtor....

Ill.Rev.Stat. ch. 110, 1112-1001(f) & (h)(3) (emphasis added).

The Trustee contends that paragraph 12-1001(f) does not apply to

beneficiaries of life insurance policies, but provides an exemption only to an insured debtor who, as the owner of the policy, desires to claim that policy as exempt. The Court agrees. As explained by the court in the case of In re Vogel, 78 B.R. 192 (Bankr. N. D. Ill. 1987), "pursuant to Section 12-1001(f) of the Illinois Code, life insurance proceeds payable to, inter alia, a debtor's spouse, parent, child or other dependent [sic] are exempt from claims of the creditors of the insured under Illinois law and thus may be claimed as exempt by an insured debtor involved in a bankruptcy case." Id. at 193 (emphasis added).

Debtor, however, is entitled to an exemption in the life insurance proceeds under paragraph 12-1001(h)(3) if she can establish that the proceeds are "reasonably necessary" for her support. At the hearing on this matter, the Trustee stated that debtor's schedules contained insufficient information regarding debtor's sources of income. The Court ordered debtor to submit an affidavit detailing her sources and amount of income, and debtor has done so. The affidavit reveals that debtor's gross monthly income is approximately \$445.43, while her schedule of current expenditures, filed with her bankruptcy schedules, indicates that she has current monthly expenses totaling \$1,425.00. In light of this information, the Court finds that the insurance proceeds are unquestionably "reasonably necessary" for debtor's support.

Accordingly, for the reasons stated, the Trustee's objections to exemptions are OVERRULED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: December 7, 1989